

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.C., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
CUSTOMS & BORDER PROTECTION,  
El Paso, TX, Employer**

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**Docket No. 10-1734  
Issued: April 5, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 17, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 11, 2010. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained a right knee injury in the performance of duty.

**FACTUAL HISTORY**

This is the second appeal in the present case.<sup>1</sup> In a decision dated March 24, 2009, the Board affirmed that appellant had not met his burden of proof in establishing an employment-related right knee injury in the performance of duty on September 17, 2007. The facts and

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<sup>1</sup> Docket No. 09-122 (issued March 24, 2009).

circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.

On February 15, 2010 appellant requested reconsideration and submitted a January 12, 2010 report from Dr. John W. Ellis, a Board-certified physiatrist, who noted examining appellant that date regarding his right knee. Dr. Ellis noted the history of the September 17, 2007 claimed injury as well as previously claimed right knee injuries which occurred at work on October 22, 1991 and June 19, 1992. He indicated that appellant had right knee surgery on July 23, 2002 and December 9, 2004 and a total knee replacement on October 23, 2007.<sup>2</sup> Dr. Ellis noted that prior to the September 17, 2007 injury appellant had right knee pain but his knee was stable and he was able to complete his certification each year without difficulty. Appellant reported that on September 17, 2007 he was doing baton certification and when he twisted he had severe pain in his right knee, which became swollen. He sought treatment from Dr. Alvaro A. Hernandez, a Board-certified orthopedist, who performed a right total knee replacement on October 23, 2007 and diagnosed severe right knee osteoarthritis. On right knee examination there was limited flexion and extension, severe anterior cruciate ligament laxity, moderate medial collateral ligament, mild lateral collateral ligament laxity and normal sensation of the lower extremities. Dr. Hernandez diagnosed internal derangement of the right knee that required a total knee replacement. He opined that, based on the examination, review of the records, his training and experience and upon reasonable medical certainty, the injuries, impairments and disabilities set forth in the diagnoses, findings and impairments, arose out of and in the course of appellant's employment and that the employment factors and work duties contributed to, aggravated or caused appellants work injuries, disabilities and impairments. Dr. Ellis advised that at the time of the September 17, 2007 injury appellant had significant impairment of the right knee due to traumatic arthritis caused by his previous injuries which resulted in right knee instability and it would have taken very little movement to tear the ligaments which occurred on September 17, 2007. He opined that but for the September 17, 2007 injury appellant would not have needed the total knee replacement.

In a decision dated May 11, 2010, the Office denied modification of the decision dated July 29, 2008 on the grounds that the medical evidence was not sufficient to establish that appellant's condition was caused by the factors of employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential

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<sup>2</sup> Neither the surgical records nor the case records from the prior claims are presently before the Board.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

Appellant alleged that he sustained a right knee injury while participating in baton training. As the Board previously found, the evidence supports that the September 17, 2007 incident occurred as alleged. However, appellant has not submitted sufficient medical evidence to establish that the September 17, 2007 incident caused or aggravated a right knee condition. He did not submit a sufficiently well-rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated his claimed condition.

In a January 12, 2010 report, Dr. Ellis noted a history of injury and subsequent treatment which included a right total knee replacement on October 23, 2007. He diagnosed severe osteoarthritis of the right knee. Dr. Ellis opined that, based on the examination, review of the records, his training and experience and upon reasonable medical certainty, that appellant's

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<sup>4</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *Id.*

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

injuries, impairments and disabilities arose out of and in the course of appellant's employment and that the employment factors and work duties contributed to, aggravated or caused his injuries, disabilities and impairments. He noted that at the time of the September 17, 2007 injury appellant had significant impairment of the right knee due to traumatic arthritis caused by his previous injuries which resulted in right knee instability. Dr. Ellis opined that, but for the September 17, 2007 injury, appellant would not have needed the total knee replacement. He failed, however, to provide a rationalized opinion explaining why the diagnosed internal derangement and severe osteoarthritis of the right knee was aggravated by twisting during baton exercises or other factors of employment.<sup>9</sup> Dr. Ellis did not explain the process by which activities such as calisthenics and baton exercises would cause the diagnosed internal derangement and severe osteoarthritis of the right knee or why such condition would not be due to the natural progression of the preexisting traumatic arthritis. He appears to attribute the diagnosed "severe traumatic arthritis" in the right knee to appellant's previous injuries. These other claims are not before the Board on the present appeal. The Board finds that Dr. Ellis did not provide sufficient medical reasoning explaining the basis of his conclusion on causal relationship. The need for medical reasoning or rationale, is particularly important in a case such as this where appellant has a preexisting condition in the same area of the body for which he claims a traumatic injury. Therefore, the opinion of Dr. Ellis is insufficiently rationalized to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied his claim for compensation.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained right knee injury causally related to his September 17, 2007 employment incident.

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<sup>9</sup> *Id.*

<sup>10</sup> See Dennis M. Mascarenas, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board